



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

(AE-17J)

JUL 31 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Basil G. Constantelos
Director of Environmental, Health and Safety
Midwest Generation, LLC
One Financial Place
440 S. LaSalle Street, Suite 3500
Chicago, Illinois 60605

Mary O'Toole
Director of Environmental Strategy
Commonwealth Edison
One Financial Place
440 S. LaSalle Street, 33rd Floor
Chicago, Illinois 60605

RE: Notice and Finding of Violation issued to Midwest Generation, LLC, and to
Commonwealth Edison Company

Dear Mr. Constantelos and Ms. O'Toole:

The United States Environmental Protection Agency (U.S. EPA) is issuing the enclosed Notice of Violation and Finding of Violation (NOV/FOV) to Midwest Generation, LLC, and to Commonwealth Edison Company (hereinafter "the Parties"). This NOV/FOV is issued in accordance with Section 113(a) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a).

The U.S. EPA has determined that the Parties are violating the Prevention of Significant Deterioration requirements under Section 165 of the Act, 42 U.S.C. § 7475; the New Source Performance Standards under Section 111 of the Act, 42 U.S.C. § 7411; the Operating Permit requirements under Title V of the Act, 42 U.S.C. §§ 7661 – 7661e; and opacity and particulate matter emissions limitations under the Illinois State Implementation Plan at the following six coal-fired electric generating facilities located in Illinois: Crawford Station, Fisk Station; Joliet Station, Powerton Station, Waukegan Station, and Will County Station.

The U.S. EPA is offering you an opportunity to confer with us about the violations cited in the NOV/FOV. The conference will give you an opportunity to present information on the specific

findings of violations, and the steps you will take to bring the facilities into compliance. Please plan for the Parties' technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The U.S. EPA contact in this matter is Kathy Memmos. You may call her at (312) 353-4293 to request a conference. You should make your request for a conference no later than 10 calendar days after you receive this letter, and we should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Stephen Rothblatt", written over a horizontal line.

Stephen Rothblatt, Director
Air and Radiation Division

Enclosure

cc: David Bloomberg , Manager
Compliance and Systems Management Section
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Chicago, Illinois 60603

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	
Commonwealth Edison Company)	Proceedings Pursuant to
Chicago, Illinois)	Section 113(a)(1) and (a)(3) of the
)	Clean Air Act,
and)	42 U.S.C. §7413(a)(1) and (a)(3)
)	
Midwest Generation, LLC)	EPA-5-07-IL-11
Chicago, Illinois)	
_____)	

NOTICE AND FINDING OF VIOLATION

This Notice and Finding of Violation (Notice) is issued to Midwest Generation, LLC and to Commonwealth Edison Company for violations of the Clean Air Act (Act), 42 U.S.C. §§ 7401 *et seq.*, at the following six of its coal-fired electric generating facilities located in Illinois: Crawford Station (Chicago); Fisk Station (Chicago); Joliet Station (Joliet); Powerton Station (Pekin); Waukegan Station (Waukegan) and Will County Station (Romeoville).

This Notice is issued pursuant to Sections 113(a)(1) and (a)(3) of the Act, 42 U.S.C. § 7413(a)(1) and (3). The authority to issue this Notice has been delegated to the Regional Administrator of EPA Region 5, and redelegated to the Director, Air and Radiation Division.

A. STATUTORY AND REGULATORY BACKGROUND

Prevention of Significant Deterioration

1. When the Act was passed in 1970, Congress exempted existing facilities, including the coal-fired power plants that are the subject of this Notice, from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of Appeals for the D.C. Circuit explained in *Alabama Power v. Costle*, 636 F.2d 323, 400 (D.C. Cir. 1979), “[t]he statutory scheme intends to ‘grandfather’ existing industries; but...this is not to constitute a perpetual immunity from all standards under the PSD program.” Rather, the Act requires grandfathered facilities to install modern pollution control devices whenever the unit is proposed to be modified in such a way that its emissions may increase.

2. The Prevention of Significant Deterioration (PSD) provisions of Part C of Title I of the Act require preconstruction review and permitting for modifications of stationary sources. *See* 42 U.S.C. §§ 7470-7492. Pursuant to applicable regulations, if a major stationary source located in an attainment area is planning to make a major modification, then that source must obtain a PSD permit

before beginning actual construction. See 40 C.F.R. § 52.21(i). To obtain this permit, the source must, among other things, undergo a technology review and apply Best Available Control Technology (BACT); perform a source impact analysis; perform an air quality analysis and modeling; submit appropriate information; and conduct additional impact analyses as required.

3. On August 7, 1980, U.S. EPA determined that the Illinois PSD rules did not satisfy the Act's requirements and disapproved them under Section 110(a)(3) of the Act, 42 U.S.C. § 7410(a)(3). At that same time, U.S. EPA incorporated the provisions of 40 C.F.R. § 52.21(b) through (w) into the Illinois SIP, 45 *Fed. Reg.* 52741, as amended at 46 *Fed. Reg.* 9584 and codified at 40 C.F.R. § 52.738. U.S. EPA delegated to the Illinois Environmental Protection Agency (IEPA) the authority to review and process PSD permit applications, and to implement the federal PSD program. 46 *Fed. Reg.* 9584.

4. 40 C.F.R. § 52.21(i)(1) provides that "no stationary source or modification to which the requirements of paragraphs (j) through (r) of this section apply shall begin actual construction without a permit that states that the stationary source or modification would meet those requirements."

5. 40 C.F.R. § 52.21(i)(2) provides that "the requirements of paragraphs (j) through (r) of this section apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the Act"

6. The PSD regulations define "major modification" as "any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase" of a regulated pollutant. 40 C.F.R. § 52.21(b)(2)(i).

New Source Performance Standards

7. Under Section 111 of the Act, 42 U.S.C. § 7411, the Administrator promulgated the New Source Performance Standards (NSPS) General Provisions, at 40 C.F.R. Part 60, Subpart A, and the "Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978," codified at 40 C.F.R. Part 60, Subpart Da. Subpart Da applies to each electric utility steam generating unit capable of combusting more than 73 megawatts (250 million Btu per hour) heat input of fossil fuel (alone or in combination with any other fuel). 40 C.F.R. § 60.40a(a)(1).

8. 40 C.F.R. § 60.14(a) provides that "...any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification within the meaning of section 111 of the Act. Upon modification, an existing facility shall become an affected facility for each pollutant to which a standard applies and for which there is an increase in the emission rate to the atmosphere."

9. 40 C.F.R. § 60.42a(a)(1) provides that no owner or operator subject to the provisions of [40 C.F.R. Part 60, Subpart Da] shall cause to be discharged into the atmosphere from any affected facility any gases which contain particulate matter in excess of 0.03 lb per million Btu heat input derived from the combustion of solid, liquid, or gaseous fuel.

10. 40 C.F.R. § 60.42a(b) provides that no owner or operator subject to the provisions of [40 C.F.R. Part 60, Subpart Da] shall cause to be discharged into the atmosphere from any affected facility any gases which exhibit greater than 20 percent opacity, except for one six-minute period per hour of not more than 27 percent opacity.

11. 40 C.F.R. § 60.43a(a)(1) provides that no owner or operator subject to the provisions of [40 C.F.R. Part 60, Subpart Da] shall cause to be discharged into the atmosphere from any affected facility which combusts solid fuel or solid-derived fuel...any gases which contain sulfur dioxide in excess of 1.2 lb per million Btu and 10 percent of the potential sulfur dioxide emissions (90 percent reduction).

12. The NSPS General Provisions, at 40 C.F.R. § 50.11(d), require that at all times, including periods of startup, shutdown, and malfunction, owners and operators must, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

Standards for Opacity and Particulate Matter

13. The U.S. EPA approved 35 Ill. Admin. Code § 201.102 (previously codified as Rule 101), definitions, as part of the Illinois SIP on May 31, 1972 (37 *Fed. Reg.* 10862). 35 Ill. Admin. Code § 201.102 defines "modification" as "any physical change in, or change in the method of operations, of an emission source or of air pollution control equipment which increases the amount of any specified air contaminant emitted by such source or equipment"

14. The U.S. EPA approved 35 Ill. Admin. Code §§ 212.122 and 212.123, governing visible emissions, as part of the Illinois SIP on December 29, 1992 (57 *Fed. Reg.* 61834, 61837).

15. 35 Ill. Admin. Code § 212.123 prohibits the emission of particulate matter having an opacity greater than 30 percent from any emission source other than those sources subject to 35 Ill. Admin. Code § 212.122, except, given other conditions are met, for opacity up to 60 percent for periods aggregating 8 minutes in any 60-minute period.

16. 35 Ill. Admin. Code § 212.122 prohibits the emission of particulate matter having an opacity greater than 20 percent from any fuel combustion emission source with a heat input greater than 250 mmbtu/hr for which construction or modification commenced on or after April 14, 1972, except, given other conditions are met, such units may have opacity up to 40 percent for periods aggregating 3 minutes in any 60-minute period.

17. The U.S. EPA approved 35 Ill. Admin. Code § 212.204, governing particulate matter emissions from fuel combustion sources, as part of the Illinois SIP on October 21, 1993 (54 *Fed. Reg.* 54294).

18. 35 Ill. Admin. Code § 212.204 prohibits emissions of particulate matter exceeding 0.1 lb/mmbtu in any one hour, from any fuel combustion emission unit for which modification commenced after April 14, 1972, using solid fuel exclusively.

19. The U.S. EPA approved 35 Ill. Admin. Code § 212.124 as part of the Illinois SIP on December 12, 1992 (57 *Fed. Reg.* 61837). 35 Ill. Admin. Code § 212.124(d)(2) provides, among other things, that, for emission units not subject to Chapters 111 or 112 of the Act, but subject to Ill. Admin. Code §§ 212.201, 212.202, 212.203, or 212.204, an exceedance of the opacity limitations of Ill. Admin. Code §§ 212.122 or 212.123 shall constitute a violation of the particulate emission limitation of, among other things, Ill. Admin. Code §§ 212.201, 212.202, 212.203, or 212.204.

Title V Requirements

20. Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1) requires each State to develop and submit to U.S. EPA an operating permit program which meets the requirements of Title V. Pursuant to Appendix A of 40 C.F.R. Part 70, on December 4, 2001, U.S. EPA granted Illinois final approval of its Title V Clean Air Act Permit Program, effective November 30, 2001.

21. 40 C.F.R. § 70.3 provides that the requirements of Part 70 apply to any major source located in a state that has received whole or partial approval of its Title V program.

22. 40 C.F.R. § 70.5(a) requires the owner or operator of a Part 70 source to submit a timely and complete permit application.

23. 40 C.F.R. § 70.5(a)(2) defines “complete application” to include information that is “sufficient to evaluate the subject source and its application and to determine all applicable requirements.”

B. FACTUAL BACKGROUND

24. Midwest Generation, LLC is a Delaware corporation, authorized to do business in the State of Illinois.

25. Midwest Generation, LLC is a “person”, as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

26. Commonwealth Edison Company is an Illinois corporation, authorized to do business in the State of Illinois.

27. Commonwealth Edison Company is a “person,” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

28. At all times relevant to this Notice, Midwest Generation LLC and/or Commonwealth Edison Company (hereinafter “the Parties”) were the owner and/or operator of the following facilities located in Illinois: Crawford Station, Fisk Station, Joliet Station, Powerton Station, Waukegan Station, and Will County Station.

29. During all times relevant to this Notice, the aforementioned six facilities were located in areas classified as attainment for TSP (total suspended particulates or PM) and sulfur

30. Crawford Station is located at 3501 South Pulaski Road, Chicago, Cook County, Illinois; and has the potential to emit more than 100 tons per year each of nitrogen oxides (NO_x), sulfur dioxide (SO₂), and particulate matter (PM). The Station consists, in part, of the following coal-fired boilers for electric generation, each of which has a heat input greater than 250 million BTU/hour: Unit 7 (BLR1) and Unit 8 (BLR2), constructed in 1958 and 1960, respectively. Each Unit is served by a separate stack.

32. Between [REDACTED] and [REDACTED], various physical changes or changes in the method of operation were made at the Crawford Station. These changes include, but are not limited to, the following projects on Units [REDACTED] and [REDACTED]:

[illegible]

5

34. The Fisk Station is a “fossil fuel-fired steam electric plant of more than 250 million British thermal units per hour.” Therefore, the Fisk Station constitutes a “major stationary source” within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(a); and a “major emitting facility” within the meaning of Section 169(1) of the Act, 42 U.S.C. § 7479(1). Unit 19 at the Fisk Station constitutes an “electric utility steam generating unit,” as defined at 40 C.F.R. § 60.41a.

[illegible]

37. The Joliet Station is a “fossil fuel-fired steam electric plant of more than 250 million British thermal units per hour.” Therefore, the Joliet Station constitutes a “major stationary source” within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(a); and a “major emitting facility” within the meaning of Section 169(1) of the Act, 42 U.S.C. § 7479(1). Each of the

above-listed units at the Joliet Station constitutes an "electric utility steam generating unit," as defined at 40 C.F.R. § 60.41a.

38. Between [REDACTED] and [REDACTED], various physical changes or changes in the method of operation were made at the Joliet Station. These changes include, but are not limited to, the following projects on Units [REDACTED] and [REDACTED]:

[REDACTED]

[REDACTED]

39. The Will County Station is located at 529 East 135th, Romeoville, Will County, Illinois; and has the potential to emit more than 100 tons per year each of NO_x, SO₂, and PM. The Station consists, in part, of the following coal-fired boilers for electric generation, each of which has a heat input greater than 250 million BTU/hour: Unit 1 (BLR1), Unit 2 (BLR2), Unit 3 (BLR3), and Unit 4 (BLR4), constructed in 1955, 1955, 1957, and 1963, respectively. Each unit is served by a separate stack.

40. The Will County Station is a "fossil fuel-fired steam electric plant of more than 250 million British thermal units per hour." Therefore, the Will County Station constitutes a "major stationary source" within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(a); and a "major emitting facility" within the meaning of Section 169(1) of the Act, 42 U.S.C. § 7479(1). Each of the above-listed units at the Will County Station constitutes an "electric utility steam generating unit," as defined at 40 C.F.R. § 60.41a.

41. Between [REDACTED] and [REDACTED], various physical changes or changes in the method of operation were made at the Will County Station. These changes include, but were not limited to, the following projects on Units [REDACTED], [REDACTED], [REDACTED], and [REDACTED]:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

42. The Powerton Station is located at 13082 East Manito Road, Pekin, Tazewell County, Illinois; and has the potential to emit more than 100 tons per year each of NOx, SO2, and PM. The Station consists, in part, of the following coal-fired boilers for electric generation, each of which has a heat input greater than 250 million BTU/hour: Unit 5 (BLR51 and BLR 52), and Unit 6 (BLR61 and BLR62), constructed in 1973, and 1976, respectively. Both units share a common stack.

43. The Powerton Station is a "fossil fuel-fired steam electric plant of more than 250 million British thermal units per hour." Therefore, the Powerton Station constitutes a "major stationary source" within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(a); and a "major emitting facility" within the meaning of Section 169(1) of the Act, 42 U.S.C. § 7479(1). Each of the above-listed units at the Powerton Station constitutes an "electric utility steam generating unit," as defined at 40 C.F.R. § 60.41a.

44. Between [REDACTED] and [REDACTED], various physical changes or changes in the method of operation were made at the Powerton Station. These changes include, but are not limited to, the following projects on Units [REDACTED] and [REDACTED]:

[REDACTED]

[REDACTED]

45. The Waukegan Station is located at 401 East Greenwood Ave, Waukegan, Lake County, Illinois; and has the potential to emit more than 100 tons per year each of NO_x, SO₂, and PM. The Station consists, in part, of the following coal-fired boilers for electric generation, each of which has a heat input greater than 250 million BTU/hour: Unit 6 (BLR1), Unit 7 (BLR2), and Unit 8 (BLR3), constructed in 1952, 1958, 1962, respectively. Each unit is served by a separate stack.

46. The Waukegan Station is a "fossil fuel-fired steam electric plant of more than 250 million British thermal units per hour." Therefore, the Waukegan Station constitutes a "major stationary source" within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(a); and a "major emitting facility" within the meaning of Section 169(1) of the Act, 42 U.S.C. § 7479(1). Each of the above-listed units at the Waukegan Station constitutes an "electric utility steam generating unit," as defined at 40 C.F.R. § 60.41a.

47. Between [REDACTED] and [REDACTED], various physical changes or changes in the method of operation were made at the Waukegan Station. These changes include, but are not limited to, the following projects on Units [REDACTED], [REDACTED] and [REDACTED]:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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[REDACTED]

C. NOTICE AND FINDING OF VIOLATIONS

Violations of the Prevention of Significant Deterioration Provisions

48. The projects identified in paragraph 32 through 47, above, each caused a significant net emissions increase, as defined at 40 C.F.R. §§ 52.21(b)(3)(i) and (b)(23)(i), of SO₂, NO_x and/or PM.

49. The projects identified in paragraphs 32 through 47, above, each constituted a “major modification,” as that term is defined at 40 C.F.R. § 52.21(b)(2)(i).

50. For the modifications listed in paragraphs 32 through 47, above, The Parties failed to obtain a PSD permit(s) as required by 40 C.F.R. § 52.21(i)(1).

51. None of the modifications listed in paragraphs 32 through 47, above, fall within the exemptions to the definition of “major modification” found at 40 C.F.R. § 52.21(b)(2)(iii).

52. The Parties violated and continue to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21(i)(1) by constructing major modifications to existing major sources at the above-listed facilities without applying for or obtaining PSD permits and operating the modified facilities without installing the best available control technology or going through PSD review, and installing appropriate emission control equipment in accordance with a BACT analysis.

53. Each of the violations exists from the date of the start of construction of each modification and continues until the appropriate PSD permit is obtained and the necessary pollution control equipment is installed and operated.

Violations of the Title V Provisions

54. Each of the six facilities identified, above, is a “major source” as defined by Section 501(2) of the Act, 42 U.S.C. § 7661(2) and 40 C.F.R. § 70.2.

55. Respondent’s Title V permit applications for the six facilities identified above failed to include the citation and description of all applicable requirements and other specific information that may be necessary to implement and enforce applicable requirements of the Act or to determine the applicability of such requirements, including, but not limited to, the requirement to apply/install BACT for SO₂, NO_x and/or PM for each of the units for which a project is described in paragraphs 32 through 47, above, the applicable NSPS provisions, as well as all applicable provisions of the Illinois SIP, as required by 40 C.F.R. § 70.5(c).

56. The parties violated and continue to violate 40 C.F.R. § 70.5 by failing to supplement or correct the Title V permit applications for the six facilities. *See* 40 C.F.R. § 70.5(b).

**Violations of the Standards of Performance for Electric Utility Steam
Generating Units**

57. For Crawford Station Unit 7, the maximum gross generating capability increased from a boiler design rated capability of 219 MW to at least [REDACTED] MW, based on information submitted by Midwest Generation, LLC.

58. For Crawford Station Unit 8, the maximum gross generating capability increased from a boiler design rated capability of 325 MW to at least [REDACTED] MW, based on information submitted by Midwest Generation, LLC.

59. For Fisk Station Unit 19, the maximum gross generating capability increased from a boiler design rated capability of 325 MW to at least [REDACTED] MW, based on information submitted by Midwest Generation, LLC.

60. For Joliet Station Unit 6, the maximum gross generating capability increased from a boiler design rated capability of 325 MW to at least [REDACTED] MW, based on information submitted by Midwest Generation, LLC.

61. For Powerton Station Unit 5, the maximum gross generating capability increased from a boiler design rated capability of 827 MW to at least [REDACTED] MW, based on information submitted by Midwest Generation, LLC.

62. For Powerton Station Unit 6, the maximum gross generating capability increased from a boiler design rated capability of 827 MW to at least [REDACTED] MW, based on information submitted by Midwest Generation, LLC.

63. For Waukegan Station Unit 7, the maximum gross generating capability increased from a boiler design rated capability of 325 MW to at least [REDACTED] MW, based on information submitted by Midwest Generation, LLC.

64. For Waukegan Station Unit 8, the maximum gross generating capability increased from a boiler design rated capability of 325 MW to at least [REDACTED] MW, based on information submitted by Midwest Generation, LLC.

65. For Will County Station Unit 1, the maximum gross generating capability increased from a boiler design rated capability of 150 MW to at least [REDACTED] MW, based on information submitted by Midwest Generation, LLC.

66. For Will County Station Unit 2, the maximum gross generating capability increased from a boiler design rated capability of 150 MW to at least [REDACTED] MW, based on information submitted by Midwest Generation, LLC.

67. For Will County Station Unit 3, the maximum gross generating capability increased from a boiler design rated capability of 271 MW to at least [REDACTED] MW, based on information submitted by Midwest Generation, LLC.

68. For Will County Station Unit 4, the maximum gross generating capability increased from a boiler design rated capability of 525 MW to at least ■■■ MW, based on information submitted by Midwest Generation, LLC.

69. One or more of the physical changes identified in the above Paragraphs 32 through 47, above, for Crawford Station Unit 7 and Unit 8; Fisk Station Unit 19; Joliet Station Unit 6; Powerton Station Unit 5 and Unit 6; Waukegan Station Unit 7 and Unit 8; and Will County Station Unit 1, Unit 2, Unit 3, and Unit 4, resulted in an increase in the emission rate (in terms of lbs/hr) to the atmosphere of a pollutant regulated by 40 C.F.R. Part 60, Subpart Da.

70. As such, Crawford Station Unit 7 and Unit 8; Fisk Station Unit 19; Joliet Station Unit 6; Powerton Station Unit 5 and Unit 6; Waukegan Station Unit 7 and Unit 8; and Will County Station Unit 1, Unit 2, Unit 3, and Unit 4 were "modified" within the meaning of 40 C.F.R. § 60.14 and Section 111(a)(4) of the Act, 42 U.S.C. § 7411(a)(4), and are therefore affected facilities subject to 40 C.F.R. Part 60, Subpart Da.

71. Crawford Station Unit 7 and Unit 8; Fisk Station Unit 19; Joliet Station Unit 6; Powerton Station Unit 5 and Unit 6; Waukegan Station Unit 7 and Unit 8; Will County Station Unit 1, Unit 2, Unit 3, and Unit 4 have no controls to reduce emissions of sulfur dioxide and are therefore in violation of the sulfur dioxide emissions standard at 40 C.F.R. § 60.43a(a)(1).

72. As evidenced by the particulate matter emissions stack test results provided in Attachment A, at least the following units have violated the particulate matter emissions standard of 0.03 lb/mm BTU at 40 C.F.R. § 60.42a(a): Crawford Station Unit 7 and Unit 8; Fisk Station Unit 19; Joliet Station Unit 6; Powerton Station Unit 5; Waukegan Station Unit 7, and Unit 8; and Will County Station Unit 4.

73. As set forth below in Paragraph 74, Crawford Station Unit 7 and Unit 8; Fisk Station Unit 19; Joliet Station Unit 6; Powerton Station Unit 5 and Unit 6; Waukegan Station Unit 7, and Unit 8; Will County Station Unit 1, Unit 2, Unit 3, and Unit 4 have violated the particulate matter emissions standard at 40 C.F.R. § 60.42a(b), which prohibits the discharge of gases into the atmosphere exhibiting greater than 20 percent opacity, except for one six-minute period per hour of not more than 27 percent opacity. The violations summarized in paragraph 74 are based on only the particulate matter emissions in excess of 30 percent opacity as reported by Midwest Generation in excess emission reports, and do not include particulate matter emissions in excess of 20 percent opacity (*i.e.* between 20 percent and 30 percent opacity).

Violations of Opacity and Particulate Matter Emissions Standards

74. Table 1, below, identifies the station, unit, and number of minutes of emissions in violation of 35 Ill. Admin. Code § 212.123, which prohibits emissions of particulate matter having an opacity of greater than 30 percent, based on reports of emissions in excess of 30 percent opacity submitted by Midwest Generation to the Illinois Environmental Protection Agency from the first quarter of 2002 to the second quarter 2006. The total number of minutes in Table 1 is a conservative estimate of total excess emissions as it does not include an evaluation

of any excess emissions reports for 2004 and some other quarters at certain facilities and/or units. (U.S. EPA has not obtained quarterly excess emission reports for all quarters between 2002 to the second quarter of 2006 for all units at all facilities.)

Table 1: Minutes of Excess Emissions of Particulate Matter Above 30 Percent Opacity

Station	Process ID	Emission Limit	Description of Violation
Crawford	Unit 7	30 percent opacity	1,014 minutes of excess emissions
Crawford	Unit 8	30 percent opacity	912 minutes of excess emissions
Fisk	Boiler 19	30 percent opacity	2,694 minutes of excess emissions
Joliet	Unit 6	30 percent opacity	1,488 minutes of excess emissions
Joliet	Unit 7	30 percent opacity	6,048 minutes of excess emissions
Joliet	Unit 8	30 percent opacity	5,736 minutes of excess emissions
Powerton	Unit 5/6	30 percent opacity	4,944 minutes of excess emissions
Waukegan	Unit 6	30 percent opacity	252 minutes of excess emissions
Waukegan	Unit 7	30 percent opacity	2,184 minutes of excess emissions
Waukegan	Unit 8	30 percent opacity	984 minutes of excess emissions
Will County	Boiler 1	30 percent opacity	246 minutes of excess emissions
Will County	Boiler 2	30 percent opacity	348 minutes of excess emissions
Will County	Boiler 3	30 percent opacity	7,674 minutes of excess emissions
Will County	Boiler 4	30 percent opacity	3,852 minutes of excess emissions

75. The following units, which were “modified” after April 14, 1972, as identified in Paragraphs 32 through 47, above, are subject to and in violation of 35 Ill. Admin. Code § 212.122, which prohibits the emission of particulate matter having an opacity greater than 20 percent, for, at least, the minutes identified in Table 1: Crawford Station Unit 7 and Unit 8; Fisk Unit 19; Joliet Unit 6; Powerton Unit 5/6; Waukegan Unit 7, and Unit 8; and Will County Unit 1, Unit 2, Unit 3, and Unit 4. These violations only include the particulate matter emissions in excess of 30 percent opacity as reported by Midwest Generation, LLC in excess emission reports and do not include particulate matter emissions in excess of 20 percent opacity (*i.e.* between 20 percent and 30 percent opacity).

76. In accordance with 35 Ill. Admin. Code § 212.124(d)(2), the violations of the opacity standard identified in the above Paragraphs 74 and 75, above, constitute violations of the particulate matter emission standard at 35 Ill. Admin. Code § 212.204 for the following units: Joliet Unit 7 and Unit 8; and Waukegan Unit 6.

D. ENFORCEMENT

Section 113(a) (1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a Notice of Violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, issue an administrative penalty order pursuant to Section 113(d), or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides in part that if the Administrator finds that a person has violated, or is in violation of any requirement or prohibition

of any rule...promulgated...under...[Title I or Title V of the Act], the Administrator may issue an administrative penalty order under Section 113(d), issue an order requiring compliance with such requirement or prohibition, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

E. EFFECTIVE DATE

Dated: 7/31/2007

A handwritten signature in black ink, appearing to read "Stephen Rothblatt", written over a horizontal line.

Stephen Rothblatt, Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Shanee Rucker, certify that I sent a Notice of Violation and Finding of Violation, No. EPA-5-07-IL-11, by Certified Mail, Return Receipt Requested, to:

Basil G. Constantelos
Director of Environmental, Health and Safety
Midwest Generation, LLC
One Financial Plance
440 S. LaSalle Street, Suite 3500
Chicago, Illinois 60605

Mary O'Toole
Director of Environmental Strategy
Commonwealth Edison
One Financial Place
440 S. LaSalle Street, 33rd Floor
Chicago, Illinois 60605

I also certify that I sent copies of the Notice of Violation and Finding of Violation by first class mail to:

David Bloomberg , Manager
Compliance and Systems Management Section
Bureau of Air
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702

Mary Ann Mullin, Esquire
Schiff Hardin, LLP
One Westminster Place
Lake Forest, IL 60045-1885

Byron F. Taylor, Esquire
Sidney Austin LLP
Bank One Plaza
One South Dearbon
Chicago, Illinois 60603

On the 1st day of August, 2007

Shanee Ruckier

Shanee Ruckier, Administrative
Program Assistant

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0185 7323.